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WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036-5304 • (202) 861-1500
FAX (202) 861-1783
WRITER'S DIRECT DIAL NUMBER
(202) 861-1688

October 3, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY


Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Advanced Television Systems and Their Impact Upon the
Existing Television Broadcast Service
MM Docket No. 87-268
Reply to Opposition to Supplement to
Petition for Reconsideration

Dear Mr. Caton:

Cosmos Broadcasting Corporation, hereby files the enclosed
Reply to Opposition to Supplement to Petition for Reconsideration
of the Sixth Report and Order in the above-captioned proceeding.
Please contact the undersigned if you have any questions.

Sincerely yours,


Gaspare J. Bono
Ann K. Ford

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

To: The Commission

REPLY TO OPPOSITION TO SUPPLEMENT TO PETITION FOR RECONSIDERATION

1. Cosmos Broadcasting Corporation ("Cosmos"), licensee of eight television stations located throughout the United States, including Station WAVE(TV), NTSC Channel 3, Louisville, Kentucky, through counsel, hereby files this Reply to the Opposition to Cosmos' Supplement to Petition for Reconsideration filed by Independence Television Company ("Independence"). Independence offers absolutely no substantive basis for rejection of Cosmos' request for the right to relocate its transmitter site to an alternate site to remedy potential interference, should Station WAVE(TV) experience interference as a result of the DTV transition. For this reason, Independence's Opposition must be summarily dismissed.

Background

2. On June 13, 1997, Cosmos filed a Petition for Partial Reconsideration of the Commission's Sixth Report and Order (FCC 97-115, released April 21, 1997) in the above-captioned proceeding. In that document, Cosmos requested reconsideration of the DTV allotments for seven of its eight stations. Cosmos noted, however,

that in the absence of OET Bulletin No. 69, it would be impossible for stations to determine interference that is likely to result from new DTV allotments and therefore requested an additional opportunity to comment after the release of OET Bulletin No. 69.¹

3. The Commission announced in its Order (DA 97-1377, released July 2, 1997) in the above-captioned proceeding that parties would have until August 22, 1997, to file supplements to their petitions for reconsideration of the Sixth Report and Order. Specifically, the Commission provided parties that submitted petitions for reconsideration requesting modification of their DTV allotments a 45 day period to file supplemental presentations relating to their requests.

4. Accordingly, on August 22, Cosmos filed a Supplement requesting various modifications of the DTV channel allotment plan adopted in the Sixth Report and Order. In its Supplement, Cosmos asked to retain the right to relocate its transmitter site for Station WAVE(TV) to alternate reference coordinates, or in the vicinity of those coordinates, if necessary to protect itself from harmful interference.² Cosmos noted that the proposed relocation would satisfy the Commission's spacing requirements and would not

¹Petition for Partial Reconsideration at 1-2.

²Supplement at 12. Specifically, Cosmos requested the option of moving its DTV allotment reference coordinates from 38-27-23 North Latitude and 85-25-28 West Longitude to 38-21-00 North Latitude and 85-50-57 West Longitude. Supplement at Attachment H, p.1. Cosmos had not made this specific request in its Petition for Partial Reconsideration.

be expected to create new interference.³ Furthermore, Cosmos noted that it would not necessarily seek to relocate if, after actual experience is gained, Cosmos determined that the current transmitter site is adequate.⁴

5. Independence, licensee of Station WDRB-TV, NTSC Channel 41, Louisville, filed an opposition to Cosmos' Supplement. Independence first claimed that the Louisville proposal constitutes an untimely petition for reconsideration, as Cosmos did not specifically seek reconsideration of the DTV allotment for Station WAVE(TV) in its Petition for Partial Reconsideration. Independence then argued that as the need for an alternate site is "speculative," it would not be an efficient use of Commission resources to allot a second set of coordinates. Finally, Independence claimed that Cosmos does not have reasonable assurance of the use of the site, as Cosmos had not contacted Independence, the owner of the site, regarding possible uses.

Discussion

6. The Commission should promptly dismiss Independence's opposition and grant Cosmos' request. Importantly, Independence does not allege that Cosmos' proposal for alternate coordinates for Station WAVE(TV)'s DTV Channel 47 is technically deficient or would create interference to any other station. Rather, as the attached technical statement confirms, the alternative transmitter site may

³Supplement at 12.

⁴Id.

be used in full compliance with the Commission's Rules.⁵ Furthermore, Independence does not allege that consideration of Cosmos' proposal would prejudice any party to this proceeding or any other television licensee. Indeed, seeing as Independence failed to cite any engineering or substantive legal basis for opposing Cosmos' proposal, its motivation must be seen for what it is--a transparent and baseless attempt by a competitor merely to limit the rights of the competition.

7. Cosmos preserved its right to address possible changes to its DTV allotment for Louisville by filing the Petition for Partial Reconsideration. Cosmos specifically requested additional time to analyze the DTV Table of Allotments following the release of OET Bulletin No. 69. This request was sufficient to preserve its ability to request changes to DTV proposals affecting any of its stations, including Station WAVE(TV).

8. Independence's claims regarding reasonable assurance of use of the site are simply not relevant to the instant proceeding, as Cosmos is not required to provide such assurance at this time. The Commission has stated that it will not generally require detailed showing concerning availability and suitability of a specific transmitter site at the rule making stage, but rather will require a showing demonstrating only that such an area exists. See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Key West, Florida), 3 FCC Rcd 6423 (Mass Media Bureau,

⁵See Attachment at 1.

1988).⁶ Clearly, Cosmos has demonstrated, and Independence has confirmed, that the site exists.

9. Finally, the public interest dictates consideration of Cosmos' proposal in the context of this proceeding. The vast number of channel allotments made in the Sixth Report and Order, and the number of changes requested in subsequent petitions for reconsideration, mitigates against consideration of each request in individual rulemaking proceedings outside of the context of the overall proceeding. Indeed, consideration of requests on a piecemeal basis could lead to the creation of impenetrable daisy chains of conflicting proposals. Consideration of all requests in one proceeding at this time will ultimately conserve Commission resources and ensure the timely implementation of a final DTV Table of Allotments.

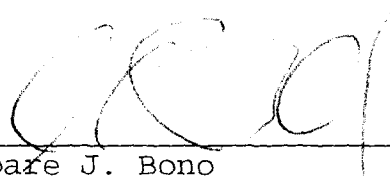
Conclusion

10. Therefore, for the reasons stated above, Cosmos respectfully requests that the Commission consider the request regarding Station WAVE(TV) made in its Supplement to Petition for Reconsideration and dismiss Independence's Opposition. Independence has failed to provide any engineering or substantive legal basis upon which Cosmos' request should be denied. In fact, granting Cosmos' request is clearly in the public interest, as

⁶The question of whether a specific site is legally available and suitable is a matter to be more appropriately considered in connection with an application for a construction permit for the use of a channel. See Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations (Johnstown, Ohio, et al.), 30 R.R. 2d 1344, 1347 (1974).

consideration of its proposal will support a timely and sound implementation of the DTV Table of Allotments. Moreover, consideration of the request in this proceeding will not result in the creation of harmful interference to any other licensee, may very well assist in eliminating potential interference in the Louisville area and will not prejudice any party.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'G. Bono', written over a horizontal line.

Gaspare J. Bono
Ann K. Ford
Michael Ruger

Counsel for Cosmos Broadcasting
Corporation

Baker & Hostetler LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036-5304

Telephone (202) 861-1500

Filed: October 3, 1997

Attachment: Technical Statement

TECHNICAL STATEMENT
WAVE(TV) LOUISVILLE, KENTUCKY

WAVE(TV) on NTSC Channel 3 at Louisville, Kentucky is requesting an alternate allotment reference site for the FCC assigned DTV channel. As previously stated, due to the lack of present DTV field test data, WAVE(TV) cannot adequately evaluate the predicted coverage areas from the present DTV allocation site and the proposed alternate allocation site at or near the WDRB(TV) transmitter site.¹ Therefore, WAVE(TV) wishes to have an alternate DTV facility at or near the WDRB(TV) site.

The required minimum separation distances, contained in Section 73.623(d) of the Commission's rules, are satisfied toward all licensed and authorized facilities at the proposed alternate WAVE(TV) DTV allotment site. Additionally, locating the FCC assigned WAVE(TV) DTV Channel 47 at or near the alternate WDRB(TV) site is not predicted to cause prohibited interference to either the existing co-located WDRB(TV) NTSC channel of 41 or the FCC assigned WDRB(TV) DTV channel of 49.²

Furthermore, Cosmos is awaiting further DTV field test data to complete the evaluation between the

¹ The geographic distance from the existing WAVE(TV) site to WDRB(TV) is 38.9 kilometers (24.1 miles). Therefore, the WDRB(TV) site is located beyond the 5 kilometer restriction established in Section 73.622 of the Commission's Rules.

² The technical data to evaluate interference was obtained from the ATSC DTV System Performance Capabilities as provided in the Commission's Sixth Report and Order, Advanced Technical Systems and Their Impact upon the Existing Television Broadcast Service, Appendix A.

sites. The field test data being awaited includes tests of the DTV indoor reception requirements and the DTV performance expected from multiple receivers. Cosmos is presently unsure if a DTV facility at or near WDRB(TV), which is geographically closer to Louisville than the present transmitter site, would offer improved reception to households within the principal community employing indoor antennas. Also, Cosmos is awaiting DTV test results based on several different DTV receivers, rather than one representative receiver.



Charles A. Cooper

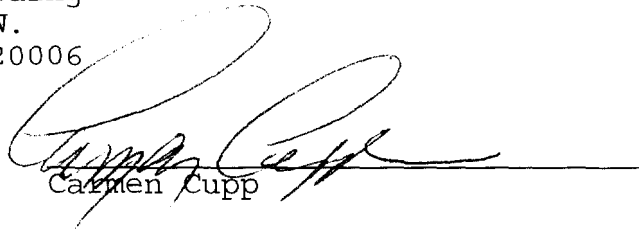
October 1, 1997

du Treil, Lundin & Rackley, Inc.
240 North Washington Blvd., Suite 700
Sarasota, Florida 34236
941.366.2611

CERTIFICATE OF SERVICE

I, Carmen Cupp, a secretary at Baker & Hostetler, hereby certify that on this 3rd day of October, 1997, a copy of the foregoing Reply to Opposition to Supplement to Petition for Reconsideration was delivered by first class mail, postage prepaid, to the following:

Donna C. Gregg, Esq.
Todd M. Stansbury, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006



Carmen Cupp